

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID J. ELLRICH, Individually and on
Behalf of Others,

and

MORGAN FINANCIAL ADVISORS,
INC.,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION,
d/b/a U.S. BANK and f/k/a FIRSTSTAR
BANK,

Defendant.

03 CV 11839 RWZ

CIVIL JUDGE Alexander

RECEIPT # 50475
AMOUNT \$ 150
SUMMONS ISSUED N/A
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. F.U.M
DATE 9/22/03

NOTICE OF REMOVAL

1. U.S. Bank National Association ("U.S. Bank") is a defendant in a civil action

brought on August 27, 2003 in the Superior Court of Massachusetts for Essex County. Pursuant to 28 U.S.C. §§ 1441 and 1446, U.S. Bank hereby removes this action to the United States District Court for the District of Massachusetts (Eastern Division), which is the judicial district in which the action is pending.

2. The grounds for removal of this action are as follows:

- a) On August 27, 2003, Plaintiffs filed a Complaint in the Superior Court of Massachusetts for Essex County, Civil Action No. 03-1690.
- b) There exists complete diversity of citizenship between the Plaintiffs and U.S. Bank, both at the time of commencement of the action and at the time of removal, because:
 - i. Plaintiff David J. Elrich is a citizen of Massachusetts.

- ii. Plaintiff Morgan Financial Advisors, Inc. is a corporation organized under the laws of Massachusetts, with its principal place of business at 76 Summer Street, Suite 2-2, Manchester, Massachusetts.
- iii. Defendant U.S. Bank is a national banking association federally chartered under 12 U.S.C 21 *et seq.*, with its principal place of business in Minneapolis, Minnesota and with Ohio as the state where its operations of discount and deposit are carried on.

c) More than \$75,000, exclusive of costs and interest, is in controversy in this action.

This court would have had original subject-matter jurisdiction of this action under the provisions of 28 U.S.C. § 1332 if the action had originally been brought in federal court. Removal is, therefore, proper under 28 U.S.C. § 1441(a).

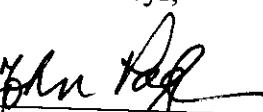
3. Removal of this action on the basis of diversity of citizenship is not precluded by the provisions of 28 U.S.C. § 1441(b) because none of the parties in interest properly joined and served as a defendant is a citizen of the Commonwealth of Massachusetts, the state in which this action was brought.

4. This Notice of Removal is timely under 28 U.S.C. §1446(b) because this Notice of Removal is filed within 30 days of service of the Complaint and Summons on U.S. Bank and within one year of the commencement of the action, as required by 28 U.S.C. § 1446(b).

5. A copy of this Notice of Removal will be served on the Plaintiffs and a copy will be filed with the clerk of the Superior Court of Massachusetts for Essex County, pursuant to 28 U.S.C. §1446(d).

6. Pursuant to Local Rule 81.1, U.S. Bank will request from the Civil Clerk of the Essex County Superior Court certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, including a copy of this Notice of Removal, and will file the same with this Court within thirty (30) days after the filing of this Notice.

U.S. Bank National Association,
By its attorneys,


Stephen W. Rider, BBO No. 419820
John Pagliaro, BBO No. 634483
NIXON PEABODY LLP
101 Federal Street
Boston, MA 02110-1832
Tel: (617) 345-1000
Fax: (617) 345-1300

DATED: September 22, 2003

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2003 a true and accurate copy of the herein Notice was served by first class mail, post paid, on the attorney of record for each other party and/or each party appearing pro se.


John Pagliaro